IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.4593 of 1998

Shri Ratan Gaba Teli — Petitioner

Vs.

The State of Maharashtra & ors. — Respondents

Mr.R.S.Apte with Mr.M.V.Limaye for petitioner.

Mr.C.R.Sonawane, AGP for Resp.nos.1 to 3.

CORAM: B.H.MARLAPALLE & NARESH H.PATIL,JJ.

September 12, 2006.

P.C.

1. The petitioner was holding the post of Assistant Superintendent in the Court at Shahapur. He was charged to have demanded and accepted an amount of Rs.150/- from the sureties to release the accused in Crime No.7/93 on 17/2/1993 and that on 2/3/1993 he had demanded and accepted Rs.100/- from one Hanif Ibrahim Memon while discharging his duties as a public servant. By demanding and accepting the said amount his conduct was unbecoming of a Government servant. The Bar Association at Shahapur had passed a resolution on 2/3/1993 making a specific reference to both these incidents and consequently the learned Civil Judge, Junior Division, Shahapur held a preliminary enquiry and submitted a report to

the learned District Judge. Disciplinary enquiry was ordered after the charge-sheet was issued against the petitioner and the enquiry was conducted by the learned Addl. Sessions Judge, Thane. The Enquiry Officer held that the charges were proved against the petitioner and the Disciplinary Authority agreed with the findings of the Enquiry Officer. Accordingly show cause notice under Rule 9(4) of the Maharashtra Civil Service (Discipline & Appeal) Rules was issued on 4/7/1995 and the same was replied by the petitioner on 11/8/1995. He also filed his written statement on 11/9/1995 and 15/3/1996. He was also given personal hearing by the Disciplinary Authority and finally by the order dated 4/6/1996 the learned District & Sessions Judge imposed the punishment of dismissal from service against the petitioner.

2. The petitioner preferred an appeal to this Court on or about 9/7/1996. By a communication dated 26/8/1997 the petitioner was informed by the learned District & Sessions Judge at Thane that this Court had dismissed the appeal preferred by the petitioner and confirmed the order of dismissal dated 4/6/1996. The petitioner made an application on 10th October 1997 and prayed for a reasoned order of the Appellate

Authority dismissing the appeal. On 16/10/1997 the Addl. Registrar (Legal) informed the petitioner that there was no speaking order passed by this Court on 12/8/1997 on the appeal submitted by the petitioner on 9/7/1996 and, therefore, a copy of the reasoned order could not be supplied to him. It is thus clear that while dismissing the petitioner's appeal, he was not heard by this Court as an Appellate Authority on the Administrative side, no reasoned order was passed and the appeal was dismissed without assigning any reasons.

3. Mr.Apte, the learned counsel for the petitioner has referred to the Full Bench decision of this Court in the case of Anil Amrut Atre v. District and Sessions Judge & anr. **[2003 (2) Bom.C.R. 246]** and submitted that the petition is required to be allowed on the sole ground that the Appellate Authority did not hear the petitioner and no reasoned order was passed dismissing his appeal. The Full Bench recorded its disagreement with the earlier view taken by a Division Bench of this Court in the case of Subhash Tatoba Nikam v. The Hon'ble High Court of Judicature of Bombay & anr. **[1999 (1) Bom.C.R. 760]** and held that the said decision was

not in conformity with the law laid down by the Apex Court in the case of R.P.Bhatt v. Union of India **[1986 (2) SCC 651]** and Ram Chander v. Union of India **[AIR 1986 SC 1173]**. The Full Bench held that affording a personal hearing by the Appellate Authority is necessary and recording of reasons was also equally necessary. As per the Full Bench it was obligatory on the Appellate Authority to apply its mind and to pass an appropriate speaking order after affording personal hearing to the delinquent.

4. By following the law laid down by the Full Bench of this Court in the case of Anil Amrut Atre (Supra) this petition deserves to be allowed partly and the Administrative Appeal dated 9/7/1996 will have to be heard and decided afresh.

5. Hence the petition succeeds and the same is hereby allowed partly. The impugned order dated 12/8/1997 passed by the Appellate Authority is hereby quashed and set aside and the Administrative Appeal dated 9/7/1996 submitted by the petitioner against the order of dismissal dated 4/6/1996 is hereby restored to the file of this Court on the Administrative side. The Registrar (Legal) is hereby

directed to place the Appeal before the Appellate Authority within a period of four weeks and the Appellate Authority is requested to decide the same as expeditiously as possible and undoubtedly by following the law laid down by the Full Bench.

(NARESH H. PATIL,J.) (B.H.MARLAPALLE